

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

**ORIGINAL ,**

Joint Application of

AMERICAN AIRLINES, INC.

and

LINEA AEREA NACIONAL CHILE,  
S.A. (LAN CHILE)

OST-97-3285 -30

under 49 U.S.C. §§ 41308 and 41309 for  
approval of and antitrust immunity for  
alliance agreement

DEPT. OF TRANSPORTATION  
DOCKET SECTION

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OPPOSITION TO THE MOTION OF AMERICAN AIRLINES, INC. TO STRIKE THE  
REPLY OF AEROVIAS DE MEXICO, S.A. DE C.V.

Communications with respect to this document should be sent to:

Lic. Alfonso Pasquel B.  
Lic. Jose Rafael Robles D.  
Mr. **Jared** Harckham  
Aerovias de Mexico, S.A. de C.V.  
Paseo de la **Reforma**  
No. 445, 5th Floor  
C.P. 06500  
Mexico, D.F., Mexico  
01 1-525-133-4000

Irwin P. Altschuler, Esq.  
Donald S. Stein, Esq.  
Stephanie E. Silverman, Senior Advisor  
John W. Vardaman, III, Esq.  
MANATT, PHELPS & PHILLIPS  
1501 M Street, N.W., Suite 700  
Washington, DC 20005-1702  
(202) 463-4300

William C. Evans, Esq.  
John R. Mietus, Jr., Esq.  
**VERNER, LIIPFERT, BERNHARD,**  
MCPHERSON AND HAND  
901 15th Street, N.W.  
Suite 700  
Washington, DC 20005  
(202) 371-6000

April 3, 1998

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REPLY OF AEROVIAS DE MEXICO, S.A. DE C.V.

Aerovias de Mexico, S.A. de C.V. ("Aeromexico") hereby responds to the March 27, 1998 Motion to Strike the Reply filed by American Airlines, Inc. ("American") in the above-captioned proceeding. Without addressing the merits of the important competitive issues raised by Aeromexico concerning the joint application of American and **Linea Aerea Nacional** Chile ("Lan Chile"), American has opted to file a Motion to Strike the Reply ("Motion"). Aeromexico respectfully submits that its Reply regarding the comments filed on the **American/Lan** Chile application was properly filed in accordance with the Department of Transportation's ("Department") regulations, and that American's hyperbolic and legally unsupported Motion should be denied!'

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1/ If the Department concludes that Aeromexico's Reply was improperly filed, it respectfully requests that the Department treat this document as a Motion for Leave to Late-File  
(continued.. .)

In attempting to strike Aeromexico's Reply, American bears the burden of proving that the Reply was "not in substantial conformity with the applicable rules or regulations of DOT. " 14 C.F.R. § 302.5 (1997). As the following discussion reveals, however, American's Motion is insufficient to meet this exacting standard.

American's Motion consists of two, equally unavailing arguments. First, American contends that because Aeromexico is a "carrier of Mexico," it lacks the necessary standing to file a response to the **American/Lan** Chile application. Motion at 3.<sup>2/</sup> American also alleges that, even if Aeromexico possessed standing to file a response, its Reply should still be stricken because it is not a true reply, but instead an "untimely objection. " Motion at 2. American offers no legal or factual support for either of these assertions -- because there is none. For this reason, both of these assertions are easily dispensed with below.

American's attempt to strike Aeromexico's Reply on the grounds that it lacks standing is founded on a mischaracterization of important procedural and substantive issues. As American is

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1/(... continued)

Comments to the **American/Lan** Chile Application for Antitrust Immunity. Good cause exists for accepting as Comments the Reply previously filed by Aeromexico because Aeromexico reasonably believed that its Reply conformed with Order 98-2-21 (February 20, 1998) and the relevant Department of Transportation Regulations (14 C.F.R. §§ 302 and 303). Moreover, acceptance of this filing will not prejudice any party or unduly delay this proceeding.

2/ American's suggestion that Aeromexico is disqualified from participating in this proceeding because it is "a carrier of Mexico" and not a U.S. carrier is especially distasteful in light of American's stem reprimand of United for its comments that Lan Chile was "selling-out" to American. Joint Reply of American and Lan Chile, (**OST-97-3285**), March 24, 1998, at 28. American classified United's remarks as "condescending" and "**xenophobic**," terms which apply to American's present denigration of Aeromexico's basis for participation in this proceeding.

surely aware, Department Order 98-2-21 (February 20, 1998) ("Order") provides that comments and replies to the American/Ian Chile application may be filed with the Department by "interested parties." See Order at 4. By claiming that Aeromexico lacked standing to file its Reply, American is in fact claiming that Aeromexico does not qualify as an "interested party" to these proceedings.

The proposition that Aeromexico lacks standing to respond to the American/Ian Chile application has no basis in fact or law. In reality, the term "interested party" as it is used in this context is intended to include ~~all parties that are interested in these proceedings~~ all parties ~~le v a n t~~ portion of the Department's Regulations makes it clear that the term "interested party" means "any person." See 14 C.F.R. §§ 303.41 and 303.42 (1997). Thus the universe of interested parties does not exclude "third-country carriers" such as Aeromexico, but includes any party that has an interest in the proceedings and chooses to file a submission. In the case of Aeromexico, its strong interest in the competitive (or, more precisely, anti-competitive) implications of the proposed American/Ian Chile alliance are clearly spelled out in its Reply. See Reply at 3-4. Aeromexico was therefore conferred standing to file its Reply by the Department's Order inviting responses from "interested parties."

American's remaining argument is that Aeromexico's Reply should still be stricken because it is not really a reply but is actually an "untimely objection." Motion at 2. As support, American cites Order 98-2-2 1, which, by American's characterization, "required objections on March 13, 1998, and replies on March 24, 1998." Motion at 1. Three "timely objections" were then filed by Delta, United and Continental. ***Id.*** at 1-2. From there, American concludes that by filing comments critical

of the application on March 24, 1998, Aeromexico's Reply was nothing more than a disguised objection, untimely filed.

American relies on a factual distortion in an effort to support its position. The truth is that Order 98-2-21 directed interested parties to file "comments" by March 13 and "replies" by March 24. See Order at 4. Delta, United and Continental therefore filed timely comments on the application in consideration, and Aeromexico, the Regional Business Partnership (Newark), and American and Lan Chile filed timely replies to those comments. The fact that all three comments express opposition to the proposed alliance, however, did not, as American suggests, dictate that Aeromexico's critical Reply also had to be filed during the comment stage. Moreover, by moving to strike only the reply of Aeromexico, and not the similarly critical reply of the Regional Business Partnership (Newark), American appears to be applying a dual set of standards which should not be countenanced by the Department.

Indeed, Aeromexico's motivation for opting to file a reply, rather than a comment, is clearly communicated in the Reply itself. Aeromexico plainly states that while it agreed with many of the points raised by Delta, United and Continental in their comments, it was concerned that certain issues of vital interest to Aeromexico and U.S. travelers had not been sufficiently discussed. Reply at 1-2. Aeromexico's Reply was thus designed to bring to the Department's attention "the very important considerations associated with the effects of the proposed alliance on the Latin American regional market," such as the competitive impact of the proposed alliance for U.S. travelers flying to and throughout the Latin American region which were not comprehensively addressed by any of the

comments of Delta, United, or Continental. Reply at 2. Consequently, Aeromexico's properly filed Reply provides a unique and important perspective to these proceedings that must be considered by the Department.

In light of the foregoing reasons, Aeromexico respectfully urges the Department to deny American's Motion and entertain Aeromexico's properly filed Reply. In the alternative, Aeromexico requests that the Department treat this document as a Motion for Leave to Late-File Comments to the American/Lan-Chile application for Antitrust Immunity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Irwin P. Altschuler", written over a horizontal line.

Irwin P. Altschuler, Esq.

Donald S. Stein, Esq.

Stephanie E. Silverman, Senior Advisor

John W. Vardaman, III, Esq.

Manatt, Phelps & Phillips

1501 M Street, N.W., Suite 700

Washington, DC 20005

202-463-4300

April 3, 1998

**CERTIFICATE OF SERVICE**  
**Department of Transportation Docket No. OST-97-3285**

I, Donald S. Stein, hereby **certify** that a copy of the Opposition To The Motion of American Airlines, Inc. to Strike the Reply of Aerovias de Mexico, S.A. de D.V., in response to Order No. 98-2-21 have been sent by first class U.S. mail, certified, return receipt requested, postage prepaid, this 3rd day of April, 1998 to the following parties:

Shelley A. **Longmuir**  
Vice President - Government **Affairs**  
United Air Lines, Inc.  
1025 Connecticut Avenue, NW  
Suite 1210  
Washington, DC 20036

Lawrence M. **Nagin**  
Executive Vice President,  
Corporate **Affairs**  
US Airways  
Crystal Park Four  
2345 Crystal Drive  
Arlington, VA 22227

Joel S. Spiro  
Deputy Assistant Secretary  
for Transportation  
Department of State  
220 1 C Street, N.W.  
Room 5830  
Washington, DC 20520

Bruce Keiner, Jr.  
Continental Airlines  
Emery Worldwide  
Crowell & Morning  
100 1 Pennsylvania Avenue N. W.  
Suite 1000  
Washington, DC 20004

**Allan W. Markham**  
Arrow Air, Inc.  
2733 36th Street, N.W.  
Washington, DC **20007- 1422**

Joel S. Burton  
United Air Lines, Inc.  
Ginsburg, Feldman &  
Bress, Chartered  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC 20036

Michael F. Goldman  
Bagileo, Silverberg &  
Goldman  
1101 30th Street, N.W.  
Suite 120  
Washington, DC 20007

Robert E. Cohn  
Delta Air Lines, Inc.  
Shaw, **Pittman**, Potts &  
Trowbridge  
2300 N Street, N.W.  
Washington, DC 20037

Elliott M. Seiden  
Vice President, Law and  
Government **Affairs**  
Northwest Airlines, Inc.  
901 15th Street, N.W.  
Suite 301  
Washington, DC 20005

Glenn **Albus**  
Legal Department  
Evergreen International  
Aviation, Inc.  
3850 Three Mile Lane  
**McMinnville, OR 97 128**

R. Tenney Johnson  
**DHL** Airways  
2300 N Street, N.W.  
Suite 600  
Washington, DC 20037

James W. Tello  
Miami Air International  
Filler, Weller & Tello, P. C.  
117 N. Henry Street  
Alexandria, VA 223 14-0784

William H. **Callaway**  
Challenge Air Cargo  
Zuckert, **Scoutt &** Rasenberger  
888 17th Street, N.W.  
Washington, DC 20006

David L. Vaughan  
United Parcel Service  
Kelley, Drye & Warren  
1200 19th Street, N.W.  
Suite 500  
Washington, DC 20036

Marshall S. Sinick  
Squire, Sanders &  
Dempsey, L.L.P.  
120 1 Pennsylvania Avenue, N. W.  
Suite 500  
Washington, DC 20004

Pierre Murphy  
Southern Air Transport  
2445 M Street, N.W.  
Suite 260  
Washington, DC 20037

Roger W. Fones  
Antitrust Division  
Department of Justice  
325 7th Street, N.W.  
Suite 500  
Washington, DC 20530

Nathaniel P. Breed, Jr.  
Federal Express, Inc.  
Shaw, **Pittman**, Potts &  
Trowbridge  
2300 N Street, N.W.  
Washington, DC 20037

Aaron Goerlich  
Carnival Air Lines  
Boros & Garfalo, P.C.  
120 1 Connecticut Avenue  
Suite 700  
Washington, DC 20036

Peter Reaveley  
Dade County Aviation Dept.  
Miami International Airport  
P.O. Box 592075  
Miami, FL 33159



John L. Richardson  
Amerijet International  
Seeger, Potter, Richardson,  
Luxton, **Joselow & Brooks**  
2121 K Street, N.W.  
Suite 700  
Washington, DC 20037

Suzette Matthews  
Million Air  
Bernstein & Matthews  
4649 John Barton Payne Road  
Marshall, VA 20115-2529

Alfred J. Eichenlaub  
Polar Air Cargo  
Ginsburg, Feldman & Bress, Chartered  
1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, DC 20036

Arnold J. Grossman  
Vice President - International Affairs  
American Airlines, Inc.  
P.O. Box 619616, MD 5635  
DFW Airport, TX 75261

Richard P. Taylor  
**Steptoe & Johnson, LLP**  
1330 Connecticut Avenue, NW  
Washington DC 20036

Stephen L. **Gelband**  
Hews, Morella & Gelband  
1000 Potomac Street, N.W.  
Suite 300  
Washington, DC 20007

Director of Aviation  
Port Authority of New York  
and New Jersey  
One World Trade Center  
65N  
New York, NY 10048

Richard J. Fahy, Jr.  
Consulting Attorney  
Trans World Airlines, Inc.  
900 19th Street, N.W.  
Suite 350  
Washington, DC 20006

Gerard J. Arpey  
Senior Vice President - Finance and Planning  
and Chief Financial Officer  
American Airlines, Inc.  
P.O. Box 61916, MD 5621  
DFW Airport, TX 75261

David A. **Schwarte**  
Managing Director, International **Affairs**  
American Airlines, Inc.  
P.O. Box 619616, MD 5635  
DFW Airport, TX 75261

Charles J. Simpson, Jr.  
Zuckert, **Scoutt &** Rasenberger, LLP  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, DC 20006


Samuel Crane, President  
Regional Business Partnership  
(Newark)  
One Newark Center  
Newark, NJ 07102

and by hand delivery, this 3rd of April, 1998 upon the following parties:

William K. Ris, Jr.  
Vice President - Government Affairs  
American Airlines, Inc.  
1101 17th Street, N.W., Suite 600  
Washington, DC 20036

Carl B. Nelson, Jr.  
Associate General Counsel  
American Airlines, Inc.  
1101 17th Street, N.W.  
Suite 600  
Washington, DC 20036

D. Scott Yohe  
Senior Vice President,  
Government Affairs  
Delta Air Lines, Inc.  
1275 K Street, N.W.  
Washington, DC 20006



---

**Donald S. Stein**  
Manatt, Phelps & Phillips  
1501 M Street, N.W.  
Washington, DC 20005-1702  
(202) 463-4300